

POLICE *v.* TIMOCI BAI

[Appellate Jurisdiction (Carew, A.C.J.) February 24th, 1953]

*S. 295 (b) (i) of the Penal Code—meaning of phrase “ by virtue of his employment ”.*

The respondent was a timekeeper employed in Suva by the Public Works Department. He took away eight sheets of corrugated iron, the subject matter of the charge. He was not given the iron by the Inspector of Works, and it was not taken by the respondent under a claim of right. The respondent as a timekeeper assisted in clerical duties but he had no authority or control over stores. The prosecution appealed by way of case stated against the decision of the 1st Class Magistrate in Suva acquitting the respondent who was charged with larceny of the sheets of corrugated iron when employed in the public service of Her Majesty contrary to section 295 (b) (i) of the Penal Code.

On appeal by case stated.

**HELD.**—The words “ by such person by virtue of his employment ” in section 295 (b) (i) of the Penal Code do not govern and qualify all the alternatives preceding these words in that section: they only qualify and govern the words “ entrusted to or received or taken into possession ”.

[**EDITOR’S NOTE.**—Section 295 (b) (i) of the Penal Code reads as follows:—

“ Any person who . . . being employed in the Public Service of Her Majesty . . . steals any chattel, money or valuable security belonging to or in the possession of Her Majesty or entrusted to or received or taken into possession by such person by virtue of his employment.” ]

*W. G. Bryce*, Solicitor-General, for the appellant.

*A. I. N. Deoki* for the respondent.

**CAREW, A.J.C.**—On these facts the Magistrate held that the respondent did not take the property into his possession by virtue of his employment, and that he did not steal “ by virtue of his employment ”. He held further that the concluding words of section 295 (b) (i) namely “ by virtue of his employment ” governed all the preceding alternatives in the subsection.

The following question is submitted for the opinion of this Court:

“ Was the Magistrate correct in law in holding that the charge was defective in that the words ‘ by such person by virtue of his employment ’ in section 295 (b) (i) of the Penal Code govern and qualify all the alternatives preceding such words in that section and that to constitute an offence under that section it was necessary to prove that the respondent whilst being employed in the public service of Her Majesty stole a chattel belonging to Her Majesty received by him by virtue of his employment.”

In my opinion the words "by such person by virtue of such employment" in section 295 (b) (i) of the Penal Code do not govern and qualify all the alternatives preceding such words in that section: they qualify and govern only the words "entrusted to or received or taken into possession". It is not necessary to prove that the respondent whilst being employed in the public service of Her Majesty stole a chattel belonging to Her Majesty received by him by virtue of his employment. As I interpret the section a person employed in the public service of Her Majesty can be convicted of any of the following five offences:—

1. stealing any chattel, money or valuable security belonging to Her Majesty ;
2. stealing any chattel, money or valuable security in the possession of Her Majesty ;
3. stealing any chattel, money or valuable security entrusted to him by virtue of his employment in the public service ;
4. stealing any chattel, money or valuable security received by him by virtue of his employment in the public service ; and
5. stealing any chattel, money or valuable security taken into his possession by virtue of his employment in the public service.

In my opinion the learned Magistrate came to a wrong decision regarding what it was necessary to prove in order to support the charge as laid under section 295 (b) (i) of the Penal Code. On the facts as found the learned Magistrate should have convicted. The order of acquittal is set aside, and the proceedings are referred back to the Magistrate with a direction to convict.

The appeal is allowed.